# State of Louisiana

Division of Administration
## Office of State Uniform Payroll

THIS MEMO HAS BEEN REPLACED BY MEMO #2012-46

March 31, 2010

OFFICE OF STATE UNIFORM PAYROLL MEMORANDUM #2010-41

TO:             ISIS HR Paid Agencies

FROM:       Andrea P. Hubbard
                 Director

SUBJECT:   Non-Resident Alien Taxation

This memo replaces OSUP Memoranda #2006-52, #2008-32 and #2008-36.

Non-Resident Aliens are defined by the IRS as any person who is not a citizen of the United States and does not meet the requirements of the Green Card Test or the Substantial Presence Test. Non-Resident Alien taxability generally depends on visa type and the home country of the employee. Most Non-Resident Aliens who hold certain visas may be exempt from FICA and/or federal/state taxes per a tax treaty. Agencies should refer to IRS Publications: 54 "Tax Guide for U.S. Citizens and Resident Aliens Abroad", 519 Chapter 9 "U.S. Tax Guide for Aliens", and 901 "U.S. Tax Treaties" for additional information concerning Non-Resident Aliens and tax treaty benefits. In addition, some Non-Resident Alien employees may be eligible for retirement participation. Agencies should contact the appropriate retirement system regarding eligibility. Non-Resident Alien employees who are exempt from FICA taxes and are not eligible for retirement should have a tax model of U6 NoFICANoRet.

### ISIS HR Requirements for Non-Resident Aliens

The ISIS HR system allows for entry of text (maintain text) on Infotype 0094, Residence Status. This functionality on IT0094 must be used to record the Non-Resident Alien's visa type and other appropriate information. The Office of State Uniform Payroll (OSUP) will utilize this data when auditing Non-Resident Alien records for compliance with federal and state tax laws. **NOTE: It is OSUP policy that IT0094 <u>must</u> be completed and monitored for all employees.**

**<u>Agencies are responsible for determining if an employee is a Non-Resident Alien, Resident Alien, or Citizen, and for correctly coding the Residence Status field on IT0094 and the Nationality field on IT0002 in ISIS HR</u>.** The Nationality and Residence Status fields must be completed for **<u>all</u>** employees. Nationality should be the country where the employee was born or holds citizenship. Code the Resident Status field as follows:

- Non-Resident Alien employees must be coded "Non-Resident Alien".
- Resident Aliens and green-card holders must be coded "Non-Citizen".
- All natural-born citizens and naturalized citizens must be coded "Citizen".

**Agencies are responsible for continuously monitoring the status of these employees and for changing the Residence Status field and updating the withholding record when any employee status changes from Non-Resident to resident alien.** The IRS has advised that penalties could be assessed for errors resulting in the incorrect reporting on Form W-2. All penalties incurred by OSUP will be charged to the appropriate agency. Agencies are advised of the following:

- Agencies must mark the "Non-resident tax calculation" indicator on IT0210 for all newly hired and re-hired non-resident employees in addition to selecting a residence status of "Non-Resident Alien" on IT0094.

- Agencies must also remember to copy and create a new IT0210 record with a new effective date and then deselect the "Non-resident tax calculation" indicator as needed for current employees when their residence status changes. New IT0094 records should also be created for these employees.

- Employees that are identified as a "Non-Resident Alien" on IT0094 or have "Non-resident tax calculation" indicator marked on IT0210 will be prevented from making tax withholding changes in LEO. These changes must be processed by the Employee Administration office.

- Agency personnel will be prevented from making filing status changes in ISIS HR for those employees with the "Non-resident tax calculation" indicator marked on IT0210. Agencies may make changes to allowances and additional withholding amounts.

## Taxation for Non-Resident Aliens

Employees with the "Non-resident tax calculation" indicator on IT0210 will have withholding taxes calculated using an amount determined and published annually by the IRS in Publication 15, Circular E, Employer's Tax Guide. All Non-Resident Alien employees are required to complete a new Form W-4 annually. Non-Resident Alien employees should refer to Internal Revenue Service Notice 1392, Supplemental Form W-4 Instructions for Nonresident Aliens, before completing Form W-4. These employees are required to:

- Request withholding as if they are single, regardless of the actual marital status;

- Claim only one allowance (If the Non-Resident Alien employee is a resident of Canada, Mexico, or South Korea, a student or business apprentice from India, or a U.S. National, the employee may claim more than one allowance.);

- Write "Non-Resident Alien" or "NRA" on the dotted line on line 6 of the Form W-4; and

- Not claim exemption from withholding.

**Tax Exemption Under a Tax Treaty**

A Non-Resident Alien from a country with which the United States has an income tax treaty may qualify for certain benefits.  Most treaties require that the Non-Resident Alien be a resident of the treaty country to qualify.   However, some treaties require that the Non-Resident Alien be a national (an individual who, although not a citizen, owes his or her allegiance to a foreign country) or a citizen of the treaty country.  The Internal Revenue Service, under section 1441 of the Internal Revenue Code, permits an exemption from withholding to Non-Resident Aliens who fall within these categories.

If an employee is claiming this exemption, Form 8233 (Exemption from Withholding on Compensation for Independent Personal Services of a Non-Resident Alien Individual) must be completed annually by **both** the employee and the agency and **must be** submitted to the Internal Revenue Service within five (5) days of completion.  Agencies **must** contact a member of the Wage and Tax Administration Unit when notified an employee qualifies for a tax treaty withholding exemption.

For assistance with ISIS HR entry contact the ISIS HR Help Desk.  Any questions regarding tax withholding procedures or tax treaties for Non-Resident Aliens should be directed to a member of the OSUP Wage and Tax Administration Unit at _DOA-OSUP-WTA@la.gov or (225):

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